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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,295

11/12/2003

Brad Kellerman

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24201 7590 11/17/2009  
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EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

11/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/706,295	<b>Applicant(s)</b> KELLERMAN ET AL.	
	<b>Examiner</b> MICHAEL G. MENDOZA	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-37 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-9 is/are rejected.
- 7) ☒ Claim(s) 5, 6, and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. The examiner agrees that the Gesswein patent does not teach a recess formed in the body member.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1-4, and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sochor 4416504.
5. Sochor teach system for locking a component along a guide wire, comprising: a guide wire (76) having a flexible body member (10) disposed thereon; a locking component having a body member (26) including means for temporarily compressing at least a portion of the flexible body member of the guide wire to allow the compress portion of the flexible body member to be placed in a recess (32) formed in the body member, the compressed portion of the flexible body member being adapted to decompress within the recess to lock the formerly compress portion of the flexible body member within the recess (col. 3, lines 16-23); wherein the means for temporarily compressing the flexibly body member of the guide wire is a longitudinal opening (24)

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extending into the body member which is adapted to receive and temporarily compress at least a portion of the flexibly body member; wherein the longitudinal opening extending into the body member is proximally tapered from one diameter to a smaller diameter (fig. 2) ; wherein the recess formed in the locking device is adjacent to the smaller diameter of the longitudinal opening and in communication with the longitudinal opening (fig. 2); wherein the flexible member disposed on the guide wire provides shock absorbing capabilities (springs absorb shock).

6. As to claims 8, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation buy only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

#### ***Allowable Subject Matter***

7. Claims 11-37 are allowable over the prior art of record.

8. Claims 5, 6, and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or render obvious the overall claimed invention of an embolic protection device comprising: a guide wire including a flexible member disposed thereon; and filter assembly having a guide wire locking component. Attached to one of the ends of the filter assembly, the guide wire locking component including means for temporarily compressing at least a portion of the flexible body

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member of the guide wire to allow the compressed portion of the flexible body member to be placed in a recess formed in the guide wire locking component, the compressed portion of the flexible body member being adapted to decompress within the recess to lock the formerly compressed portion of the flexible body member within the recess.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/M. G. M./

Examiner, Art Unit 3734

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3734